

STATE OF WISCONSIN  
Department of Commerce

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In the Matter of the PECFA Appeal of

Ron Benusa  
Arcadia Mobil  
N26528 Thompson Valley Road  
Arcadia, Wisconsin 54612-8128

Hearing # 07-30  
PECFA # 54612-1317-21

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Proposed Findings of Fact, Conclusions of Law and Decision

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Preliminary Recitals

The Department of Commerce (Department) May 29, 2007 decision denied reimbursement of certain costs associated with the remediation at the petitioner's site located at N26528 Thompson Valley Road, Arcadia, Wisconsin. Petitioner, Ron Benusa of Arcadia Mobil, by June 21, 2007 petition to the Department for hearing on the decision, filed a timely appeal of the Department's Petroleum Environmental Cleanup Fund Act (PECFA) decision.

A prehearing conference with the parties was held on January 25, 2008. Pursuant to proper notice, a class 3 administrative hearing was held on February 22, 2008 in Madison, Wisconsin, with Steven Wickland, administrative law judge, presiding.

The issue for determination raised by the petition is: Whether the Department's decision dated May 29, 2007 was incorrect with regard to the disputed issue identified in petitioner's appeal received by the Department June 21, 2007.

Parties in Interest

In accordance with Wis. Stat. § 227.47 and 227.53(1) (c) the parties to this proceeding are certified as follows:

Ron Benusa  
Arcadia Mobil  
N26528 Thompson Valley Road  
Arcadia, Wisconsin 54612-8128

Department of Commerce  
201 West Washington Avenue  
PO Box 7838  
Madison, WI 53707-7838

By: Laura M. Varriale  
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Department of Commerce  
201 W. Washington Ave.  
PO Box 7838  
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The authority to issue a final decision in this matter has been reserved with the secretary's designee by order of Secretary Mary P. Burke dated June 21, 2007.

The petitioner Ron Benusa appeared by telephone, and participated in all aspects of the hearing. Department staff Linda Collier was present at the hearing and testified.

The matter now being ready for decision, I hereby issue the following:

Findings of Fact

1. Petitioner Ron Benusa, of Arcadia Mobil, N26528 Thompson Valley Road, Arcadia, Wisconsin, operated a petroleum site with underground storage tanks (“the site”) located at 121 E. Main Street, Arcadia, Wisconsin.
2. The Department administers the petroleum environmental cleanup fund program (PECFA). The Department made a total PECFA payment to petitioner of \$5,451.52 (an amount arrived at after non-eligible items) by its decision of May 29, 2007. By its Breakdown of PECFA Costs, the Department denied as ineligible \$1,186.47 (Respondent Exhibit 1).
3. The Department, by letter of May 17, 2006, issued a “conditional case closure” to petitioner, stating that: “The Wisconsin Department of Commerce (Commerce) has reviewed the request for case closure prepared by your consultant, Midwest Environmental Mgmt Co, Inc, for the site referenced above [Arcadia Mobil, 121 E. Main St, Arcadia]. It is understood that residual soil and groundwater contamination remains on site. Commerce has determined that the petroleum contamination on the site from the petroleum underground storage tanks appears to have been investigated and remediated to the extent practicable under site conditions.” (Respondent Exhibit 2.)
4. The petitioner’s claim for PECFA reimbursement was received by the Department well beyond the 120-period provided by Wisconsin Stat. §101.143(4)(cc), the statute governing reimbursement of PECFA-related interest costs.

5. Basis for Department denial. The Department denied interest costs that accrued after September 18, 2006 (i.e., the concluding day of the 120-day period) noting that petitioner's claim was "received 285 days after the date of the conditional closure letter [sent to petitioner on May 17, 2006]. Accordingly, all interest and fees after the 60<sup>th</sup> day (July 20, 2006), are not eligible for reimbursement."  
  
(Respondent Exhibit 1, attachment at page 2.)
6. This is an appeal of the Department decision dated May 29, 2007.
7. Petitioner's claim for \$1,186.47 consists of that amount in PECFA-related interest costs which were denied by the Department.
8. By its January 14, 2008 prehearing notice and January 25, 2008 written notice of hearing herein, the Department noticed this matter to be held as a Class 3 administrative hearing.
9. The May 17, 2006 closure letter sent by the Department to petitioner (with a copy to the consultant Midwest Environmental Mgmt Co, Inc) states, in pertinent part: "This letter serves as your written notice of 'no further action.' Timely filing of your final PECFA claim (if applicable) is encouraged. If your claim is not received within 120 days of the date of this letter, interest costs incurred after 60 days of the date of this letter will not be eligible for PECFA reimbursement."  
  
(Respondent Exhibit 2.)
10. The 120-day period provided by Wis. Stat. § 101.143(4) (cc) 1.a began on May 18, 2006, that is, the day after the Department letter was sent to petitioner, and ended on

or about September 18, 2006. The Department did not receive petitioner's PECFA claim until about 285 days beyond May 18, 2007.

11. There was no Department extension of the time by which petitioner had to file its PECFA claim.

#### Applicable Statute

Wisconsin Stat. §101.143(4)(cc) provides, in part, as follows:

(cc) Ineligibility for interest reimbursement. 1.a. Except as provided in subd. 1m or 2., if an applicant's final claim is submitted more than 120 days after receiving written notification that no further remedial action is necessary with respect to the discharge, interest costs incurred by the applicant after the 60<sup>th</sup> day after receiving that notification are not eligible costs.

#### Discussion

The Department decision (PECFA Payment Decision, Respondent Exhibit 1) reflects: Department review of a total dollar amount of \$6,637.99; Department determination that the interest cost amount of \$1,186.47 is ineligible for reimbursement; and the total PECFA payment to petitioner is the amount of \$5,451.52. The basis for the decision, listed in the attachment to Respondent Exhibit 1 at page 2 is "Note to Claimant: I regret to inform you that a portion of the interest in your claim had to be denied. Please reference the letter dated May 17, 2006. The conditional closure letter, which determined that no further action was needed, requested that the final claim be filed within 120 days after the date on the correspondence (by September 18, 2006). Unfortunately, the claim was received 285 days after the date on the conditional closure letter. Accordingly, all interest and fees after the 60<sup>th</sup> day (July 20, 2006), are not eligible for reimbursement." (Respondent Exhibit 1, attachment at page 2.)

The “conditional closure letter” referred to is the Department letter to petitioner of May 17, 2006 (Respondent Exhibit 2). This letter was sent by the Department to Mr. Benusa (with a copy to his consultant), and informed petitioner of the statutory time for filing a claim to avoid certain interest costs from being ineligible for PECFA reimbursement.

Testimony of petitioner. Ron Benusa testified that his consultant, Midwest Environmental (“Midwest”), did a good job all the way up to the closure letter; that Midwest had issues with employees and one quit; and the replacement Midwest hired had to become familiar with matters. Mr. Benusa acknowledged receiving the Department May 17, 2006 letter and other Department letters advising him that he had “so many days to get the information to them.” He testified that he provided the closure letter to Midwest, faxed them a copy, and talked with Midwest staff by phone.

Mr. Benusa, about thirty days after the first letter from the Department, got another reminder letter that he had not yet filed the final claim, and that the claim must be timely filed in order to have certain interest costs considered as reimbursable. He forwarded this second letter to Midwest. In turn, Midwest informed him that a new employee was working on finalizing the information (so a PECFA claim could be filed by petitioner). He said he even sent Midwest a certified letter explaining to Midwest that if he loses out, Midwest not Mr. Benusa, should be penalized. He said he thought Midwest did get the information [for the claim] in, but that such information was late in being submitted to the Department.

Petitioner testified that, finally, Midwest told him they would reimburse him for any interest costs not reimbursed to him by the Department. He further stated that he has not received any payment from Midwest. On cross examination, petitioner stated that he did receive the Department's May 17, 2006 letter and read the note therein of the need to file a timely PECFA claim within 120 days or the interest costs incurred after 60 days would not be reimbursable. Petitioner said that he did what he could to get Midwest to file a PECFA claim on his behalf in a timely manner.

Testimony of Linda Collier. Ms. Collier is a Department claim reviewer in the Bureau of PECFA, and has been in that position since 1997. Ms. Collier reviews submitted PECFA claims for eligible costs pursuant to administrative code and statutes, which provisions she is familiar with. She discussed Respondent's Exhibit 1 herein, the Department decision of eligible costs, which she prepared. She denied interest costs listed in the final claim, pursuant to Wis. Stat. §101.143(4)cc, noting that when more than 120 days elapses from the date of the Department closure letter (here, the letter date is May 17, 2006), then any interest costs incurred by petitioner after the 60<sup>th</sup> day of receipt of such notification from the Department are not eligible for PECFA reimbursement. She referred to the interest as interest that resulted from a loan made for PECFA purposes to petitioner.

Ms. Collier noted that the May 17, 2006 letter (Respondent Exhibit 2) does reference the need to file the final claim within 120 days of the date of said letter (and, failing that, interest incurred 60 days after the May 17, 2006 letter is not reimbursable). Ms. Collier noted that the Department's August 23, 2006 letter to petitioner (Respondent Exhibit 3) is a final closure letter to Ron Benusa. The Department determined that the final

claim was filed 285 days from May 17, 2006. (Exhibit 1, attachment at page 2.) She stated that she has “no leeway” in applying the statute and the 120-day limit.

Following direct examination by counsel of Ms. Collier, petitioner stated that he had no questions of the witness. The presentation of Ms. Collier’s testimony concluded the respondent’s case. At this point, petitioner stated that Midwest ultimately prepared a claim for him, which petitioner, in turn, signed and filed with the Department. He does not recall when he filed that claim.

Respondent Exhibits 1 through 3 for identification were admitted into evidence.

Interest amounts denied based on the 120-day statutory provision.

Wis. Stat. §101.143(4)cc, Ineligibility for interest reimbursement, provides, with exceptions that don’t apply here, that “if an applicant’s final claim is submitted more than 120 days after receiving written notification that no further remedial action is necessary with respect to the discharge, interest costs incurred by the applicant after the 60<sup>th</sup> day after receiving that notification are not eligible costs.”

The May 17, 2006 Department “no further action” letter states that the site has been remediated to the extent practicable under site conditions. Thus, it is reasonable to conclude that no further remedial action is necessary. In order for petitioner to have certain interest charges eligible for reimbursement, the claim should have been filed within 120 days after the date of the Department letter of May 17, 2006. The claim, filed approximately 285 days after May 17, 2006, was filed beyond the 120-day period. Therefore, the interest costs incurred by the appellant during the relevant statutory period are ineligible and the interest amount of \$1,186.47 was properly denied. Wis. Stat.



§101.143(4)(cc) is clear in requiring that the 120-day period be met, and it was not met in this case.

#### Conclusions of Law

1. Pursuant to Wis. Stat. § 101.143, the Department has primary and extensive authority for the promulgation and administration of the program for petroleum storage remedial action and financial assistance.
2. The Department is authorized to reimburse owners and operators for costs of remediating soil and water contamination for sites that are deemed to be eligible under the statute.
3. The issue to be decided is whether the Department's decision was incorrect with regard to the decision that petitioners' site in Arcadia, Wisconsin was ineligible for PECFA reimbursement as to the interest amount of \$1,186.47.
4. The May 17, 2006 Department letter has the effect of providing written notification to petitioner that no further remedial action is necessary within the meaning of Wis. Stat. §101.143(4)cc.
5. Because the petitioner did not file within the statutory time frames of Wis. Stat. §101.143(4)(cc)1a, interest costs beyond the date of July 20, 2006 (the 60<sup>th</sup> day) are not reimbursable under PECFA.
6. Therefore, the Department properly denied the claim amount of \$1,186.47 in interest cost for remediation work, as ineligible for PECFA reimbursement.

#### Decision

The Department's decision herein is affirmed.

NOTICE TO PARTIES

The foregoing are the Proposed Findings of Fact, Conclusions of Law, and Decision in the above-entitled matter. Any party aggrieved by the proposed decision must file written objections to the findings of fact, conclusions of law and decision within twenty (20) days from the date this Proposed Decision is mailed. It is requested that you briefly state the reasons and authorities for each objection you wish to make and send them to: Madison Hearing Office, Department of Commerce, PO Box 7838, Madison, WI 53707-7838. After the objection period, the hearing record will be provided to the Deputy Secretary of the Department of Commerce, who is the individual designated to make the final decision of the Department in this matter.

\_\_\_\_\_  
Administrative Law Judge  
Steven Wickland

Dated: \_\_\_\_\_

copies to:

Ron Benusa  
Laura M. Varriale

Date Mailed: \_\_\_\_\_

Mailed By: \_\_\_\_\_

